1944.

File No. O. Reserve Bank of India/44
Legal Department.
A BRANCH

Subject:—

Opinions under the
'Reserve 'Bank of India
Act, 1934

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File No. O. Reserve Bank of India/44

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C O N T E N T S.

Legal Department File No. O. Reserve Bank of India/44.

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Office of the R.L.A.

Mr. R. V. Wani, shroff from the office of the Mamlatdar, Nandurbar went to Dhulia to take a remittance amounting to Rs.5,51,000/- to the Treasury at Dhulia on 12th April 1944. This remittance as detailed at page 3 was issued on 13th April 1944 by the Imperial Bank of India. It was packed in 8 wooden boxes, duly sealed and handed over in charge of the Police Guard at the Bank. On the morning of 14th April 1944 Mr. Wani brought a passenger bus No. BYP. 422 to the Bank and the 8 Boxes were deposited in the front compartment of the bus. The Head Constable Shivaji Bhiwaa B. No. 703 and the Constable Sadashiv Bhasker B. 1188 escorted the treasure. Both of them occupied seats in the same compartment along with the shroff Mr. Wani and other passengers. The bus left Dhulia at about 10 A.M. and reached Chimthana at a distance of 22 miles from Dhulia at about 11 A.M. The bus left Chimthana at about 11-30 A.M. At a distance of about 2 miles from Chimthana in the limits of village Salve in Sinkheda Taluka, the bus was held up and looted in broad day light by eight persons in the circumstances detailed in the lett of the Collector of West Khandesh to the Currency Officer, Reserve Bank of India, Issue Department, Bombay, No. P.O.L.D. dated 7th/8th May 1944 at pages 19-20 ante. The R.L.A. is requested to advise on the following points :-

(1) Whether under the agreement with the Reserve Bank and the rules referred to in the Deputy Secretary, Finance Department's note at page 55 Government is under any legal liability to make good a loss of treasure while it is under escort by the local police on the ground of inadequacy of the escort;

(2) If so, considering the rules, was the escort provided by the Police Sub-Inspector, Dhulia, inadequate ?

(3) In that case can the Police Sub-Inspector be charged with neglect of duty and ordered to make good the loss (e.g. under para. 2 of Government Resolution, Finance Department No. 1347/33, dated 7th October 1939);

(4) If his action amounts to a bona fide mistake and not to neglect of duty, will this Government be absolved from its legal liability to make good the loss to the Reserve Bank;

(5) Whether there was any contributory negligence on the part of the Agent, Imperial Bank, Dhulia, and if so, whether it will reduce or nullify the liability of this Government to make good the loss.

Neither the Reserve Bank of India nor its agent the Imperial Bank of India, Dhulia, was under any liability under the agreement or the rules either to provide proper and adequate escort of the remittance or to see that the escort provided was proper and adequate. It was for Government to arrange for the conveyance and adequate escorting of the remittance. In the absence of any statutory duty cast on the Bank to arrange for an adequate escort or satisfy itself about it before sending a remittance the question of an protest by the Bank for an inadequate excorting does not arise, nor does the absence of any such protest entitle Government to reimbursement. In the circumstance Government will have to agree to the remittance being debited to its account with the Bank.

Considering the amount of money lost it seems in this case if any action is to be taken it would be disciplinary action rather than a suit to recover part of the money. The material question is whether the Sub-Inspector is guilty of negligence or whether the inadequate escort is the result of an excusable mistake.

The two relevant rules appear to be rule 1302 (59) and 1302 (60) in Volume III of the Bombay District Police Manual, 6th Edition 1927. The first rule does not say that it is providing for escorts for remittances by road. It merely provides that under ordinary circumstances the following should be the ~~strength~~ strength of the guard The second rule deals with the scale of escort when treasure is escorted by rail and by implication it limits the first rule to cases when treasure is escorted by road. A journey by road may be on foot or by vehicle and there is nothing in either of these rules to suggest that the first rule is limited to occasions when ~~the~~ treasure is transported by persons walking on foot. Presumably that was never a common way of transporting treasure. Even in the days before motor cars or buses, bullock carts or the like must have been the normal way of transporting treasure by road. There appears nothing in either of these rules which would excuse the alleged practice in West Khandesh district. However in support of the practice ~~in~~ there is cited a Marathi translation which is given at page 11 of file No. 8265/4, Home Department. That translation is headed "Extract rule 57 from the rules ..... for guards and escorts" This rule prescribes the scale of escort of transport by rail. It says that when treasure is transported by rail only and not by foot road [illegible] than the scale of escort should be of a certain kind. This Marathi version seems to be a translation of an ~~a~~ obsolete rule. That is apparent from the heading "A Marathi translation of English rule framed under Government Resolution, Judicial Department, No. 7843 dated 14th November 1899. Rule 1302 (60)

which is really the relevant rule does not appear to be framed under the Government Resolution of 1869 but under Government Resolution, Home Department No 1946 of 13th October 1922. (See page 770 of Volume III of the District Police Manual). It is not clear how the Sub-Inspector came to be relying on a Marathi translation of what seems to be but of date rule. Whether it is an accurate translation is not clear in the absence of the rule itself. In his first letter to the District Magistrate regarding the inadequacy of the escort the District Superintendent of Police did not rely on the Marathi translation of the rule. (See his letter No. 290/6758 of 1944 dated 26th May 1944 at p. 6 of file No.8265/4). But it appears from his report that it is the long standing practice in the West Khandesh District to provide for carriage of treasure by road an escort similar in scale to that provided for carriage of treasury by rail. How this practice grew up and who was responsible for it, is not clear from the papers. Unless these points are clarified by an enquiry, it is not possible to say at this stage whether or not the Sub-Inspector was guilty of negligence.

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Sd/- P.N.M. 18/11

Remembrancer of Legal Affairs.

U.R. to F.D., No.351 Confl., dated the 20th November 1944.

KAN/9-7.
4 c.

Office of the R.L.A.

STATEMENT OF THE CASE.

Section 20 of the Reserve Bank of India Act, 1934, provides that the Bank shall undertake to accept monies for account of the Secretary of State, the Central Government, the Provincial Government and such States in India as may be approved of and notified by the Central Government in the Gazette of India, and to make payments up to the amount standing to the credit of their accounts respectively and to carry out their exchange, remittance and other banking operations including the management of the public debt. Sub-section (1) of section 21 lays down: "The Central Government and the Provincial Government shall entrust the Bank on such conditions as may be agreed upon with all their money remittance, exchange and banking transactions in India and in particular shall deposit free of interest all their cash balances with the Bank.

Provided that nothing in this section shall prevent the Central Government or any Provincial Government from carrying on money transactions at places where the Bank has no branches or agencies and the Central or Provincial Government may hold at such places such balances as they may require." Clause 9 of the agreement between the Government of Bombay and the Reserve Bank executed under those provisions inter alia provides "The Bank shall maintain currency chests of its department at such places within the Province of Bombay as the Government may, with previous sanction of the Central Government prescribe and the Government shall provide sufficient accommodation for such chests as may be required for

for the deposit of notes or coin and shall be responsible to the Bank for the safe custody of the said chests notes or coin. The Bank shall keep the said chests supplied with sufficientx notes or coin. The Bank shall keep the said chests supplied with sufficient notes and coin to provide currency for the transactions of Government and reasonable remittance to the public at the said places. The Government shall supply the Bank with such information and returns as the Bank may from time to time require as to the composition of the balances in the said chests and the amount and nature of the x transfers to and from the said chests By clause 8 of the agreement between the Imperial Bank and the Reserve Bank the Imperial Bank of India has agreed to act as agent of the Reserve Bank of India under certain circumstances and to hold as its bailee currency chests on behalf of the Reserve Bank of India in places where there is no office of the Banking or issue department of the Reserve Bank. It appears that Nandurbar is one of the places prescribed under clause 9 of the agreement between the Provincial Government of Bombay and the Reserve Bank of India; and Dhulia is a place where the Reserve Bank of India has no office of the Banking or Issue Department. Consequently it was the duty of the Reserve Bank of India to replenish through the Imperial Bank at Dhulia the currency chests at the sub-treasury of Nandurbar. It is nowhere prescribed as to how much currency chests have to be supplied. Ordinarily it would be the duty of the Reserve Bank of India or its agent the Imperial Bank of India to undertake the remittance. It appears however that the Government has impliedly agreed to arrange for the remittance and probably it is gratuitous.

2. Bailment is a delivery of personal chattels in trust, on a contract, express or implied that the trust shall be only executed

and the chattals redelivered in either their original or an altered form, as soon as the time or use for on condition on which they were bailed shall have elapsed or been perform-ed (See Halsbury Vol. I p. 724). There are five classes of bailment one of which is mandatum, the bailee has without reward, to do something for the bailor to or with the chattel bailed (ibid p. 726). "Of the various rights and duties of bailors and bailees that must be discussed is the degree of care and diligence required of the bailee in each kind of bailment, and that degree has, from the time of the Roman Empire till now been held to vary according to the benefits drived from the bailment by the bailor and the bailee respectively. An ordinary degree of care and skill usually is required where both benefit from the transaction; slighter diligence, perhaps where the benefit is wholly that of the bailor (as in depositum and mandatum) and greater diligence where the benefit accrues only to the bailee. It may perhaps be stated with equal truth and brevity that the bailee is required in every case to take that degree of care which ~~may reasonably looked~~ may reasonably looked for having regard to all the circumstances e.g. if you confide a casket of jewels to the custody of a yokel, you cannot expect him to take the same care of it that a banker would. It must be remembered however that bailment is a contract and the parties may always vary the incidents by the terms of the contract (ibid pp. 726-727). In Travers (Joseph) and Sons Ltd. v Cooper (1915, 1 K.B. 73) a diner at a restaurant handed his coat to a waiter and it was gone when sought for. It was held: "The same rule appears to apply

to all kinds of bailment. If the chattels bailed are not forthcoming, or are damaged the onus is in the first place upon the bailee to show circumstances negativing negligence on his part." The same principle will have to be applied in the present case and it would be for Government to prove that there was no negligence on its part.

3. As a general rule a mandatory is bound to redeliver to his principal the chattel entrusted to him upon the fulfilment of the purpose for which he received it; but if it has been destroyed or damaged without any default on his part, he will in the absence of special contract or some positive rule of law be exempt from any claim for damage or non-delivery (Halsbury Vol. I, p. 740). In paras. 5 to 7 of his report at p. 19 ante the Collector reports: "The Bank (Imperial) was authorised to hand over the remittance to the Shroff Nandurbar Sub-Treasury and the Police Sub-Inspector, Head-quarters Dhulia was informed of the details of the remittance to be sent to Nandurbar for supplying the necessary Police party to escort the remittance. The Agent Imperial Bank of India, Dhulia, handed over the remittance to the Shroff. The Head constable of the Police party supplied by the Sub-Inspector, Head-quarters, Dhulia received the sealed boxes in his custody. The Shroff from Nandurbar who was accompanying the remittance arraged for the conveyance as usual to carry the remittance. The Police party constituted of one Head Constable and one Constable (both armed). The security measure before the remittance started was to make over the sealed boxes to the care of the Police party and the latter was to accompany the remittance from Dhulia to Nandurbar Sub-treasury to guard the remittance enroute."

4. The security measures which were prescribed by Government before 1937 have been adopted by Government by G.R. F.D. No.2624-A dated 1-4-1937. The relevant provisions in this repsect are contained in rules 154 to 157 of the Resource Manual and rule 721 of the Treasury Rules. These provisions contemplate the duty of Government to arrange for an adequate escort of remittance. At any rate they do not count expressly or by implications any duty on the Reserve Bank visa-vis the Imperial Bank either to provide any adequate escort or to satisfy itself about the adequacy of such escort In other words it appears that it is the duty of Government to provide adequate escort of remittance In the present case it is clear that no adequate escort was provided. Further the failure to provide adequate escort was due to the negligence of the Government servant, namely, the Sub-Inspector. In the circumstance it appears that Government as bailee will have to make good the loss and the fact that it was the duty of the Bank to keep the chests supplied with the currency in the course of the discharge of which the remittance was looted would be no valid defence particularly when the escort of the remittance was undertaken unconditionally by Government.

5. Since the point is of great importance and the amount involved is substantial the Advocate General is requested to express his opinion on the point before Government can be advised to refer the matter for the decision of the Governor General under clause 14 of the agreement.

Id/- P.N.M. 16/2/45.

Remembrancer of Legal Affairs.

KAN/9-7.
4 c. U.R. to the Advocate General, No.75-Confl., dated the 17th February

Office of the R.L.A.

A copy of the opinion of the Advocate General, Bombay, No.6 of 1945, dated the 28th February 1945, is sent herewith along with a copy of the Statement of the Case prepared for him.

Sd/- P.N.M. 6/3/45.

Remembrancer of Legal Affairs.

U.R. to
~~Undercover~~/F.D. No.99-Confl., dated the 7th March 1945.

KAN/9-7.
4 c.

CONFIDENTIAL. No.6 of 1945.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 28th February 1945.

U.R. to the Advocate General of Bombay,
No.75-Confl. dated the 17th February 1945.

O P I N I O N.

The question for my opinion is whether as between the Reserve Bank and the Government of the Province of Bombay the Government is liable for the loss of the currency notes which were looted on their way from Dhulia to Nandurbar - in other words whether the loss should be borne by the Government and not by the Reserve Bank. The Imperial Bank at Dhulia was the Agent of the Reserve Bank and the real parties between whom the question arises are the Government and the Reserve Bank.

The present agreement between the Government and the Reserve Bank is materially different from the previous agreement and the question must be decided on the terms of the present agreement dated 28th July 1937. Under Clause 9 the obligation is on the Bank to maintain a currency chest inter alia at Nandurbar. The Bank is to keep the chest supplied with sufficient notes and coin to provide currency for the transactions of the Government. The Government is to be responsible to the Bank for the safe custody of the chest notes and coins

Mr. R.G.Wani Shroff from the office of the Mamletdar, Nandurbar came to Dhuba on 12th April to take Government remittance amounting to Rs.5,51,000/- on 12th April 1944. The remittance was issued on 13th April 1944 by the Imperial

Bank of India, Dhulia. It was handed over duly packed in eight wooden boxes in charge of the Police Guard at the Bank. The next morning Mr. Wani brought a passenger bus and took the remittance in the bus with two Armed Police escort. The bus was looted at Chimthana on its way to Nandurbar. It is open for the Bank to contend that on the remittance being handed over to Mr. Wani the responsibility of the Bank ceased and the remittance destined for the chest at Nandurbar was in the custody of the Government and Government was responsible to the Bank for its safe custody. I do not know whether an officer of the Bank was to receive the remittance at Nandurbar before it was deposited in the chest there. If the Bank had nothing more to do before the remittance was deposited in the chest there, the contention above mentioned is likely to succeed. I will however proceed on the assumption that the Bank merely handed over the remittance to Government for being taken to Nandurbar for being deposited in the chest there for the purpose of fulfilling its obligation to keep the chest supplied with sufficient currency. I am of opinion that it is not possible to contend that the Treasury Officer or his Deputy the Shroff took charge of the eight boxes not on behalf of Government but as a servant of the Bank as suggested by the Finance Department. It is true that the agreement does not contain any express provision about the conveyance of the remittance. But that in my opinion does not affect the question under consideration. The long standing practice and the course of dealing show that the Bank was under an obligation to hand over the remittance to the

Shroff who was the Deputy of the Treasury Officer and Government made all the arrangements for the transport and the providing of the necessary escort. I am also of opinion that it is not possible to contend that the Bank was under an obligation to enquire what conveyance the Government was providing for the remittance and whether the escort proposed to be provided was sufficient or not. No negligence could be attributed to the Bank in that respect. The Bank was entitled to assume that the Government would do what was necessary and proper.

I am of opinion that taking the view most favourable to Government, Government was in the position of a bailee of the Bank.

The principles of law applicable to the case are to be found in Sections 151 and 152 of the Indian Contract Act. A bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk quality and value as the goods bailed. If he does so, he is not responsible for the loss of the goods. Otherwise he is. The loss of goods entrusted to a bailee is prima facie evidence of negligence and the burden of proof to disprove negligence lies on the bailee. Admittedly in this case the escort provided was not sufficient according to the Government's own rules The fact that the insufficiency of the escort was due to a misreading or misinterpretation of the relevant rule by the Police Sub-Inspector, Head Quarters, Dhulia cannot make any difference in the matter. The fact remains that the remittance (which was of a large value) was not guarded by an escort which would have been considered adequate by the Government if the notes and coins had been Governments own property. Government as bailee did not take as much care of the goods bailed as it should under

similar circumstances take of its own goods of the same bulk quality and value as the ~~x~~ goods bailed.

I am of opinion that Government is liable to bear the loss.

Sd/-

Advocate General.

KAN/9-7.
4 c.